

AMERICAN ARBITRATION ASSOCIATION

.....

In the Matter of the Arbitration between:

FRATERNAL ORDER OF POLICE,
LODGE No. 5 (Union)

-AND-

**AWARD
AND OPINION**

CITY OF PHILADELPHIA, PA
(City)

Docket No. 14 390 01837 10
(P/O Takeya Wilson PR# [REDACTED] - Discharge)

.....

BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES: For the Union: MARK L. GELMAN, ESQ.
JENNINGS SIGMOND, P. C.

For the City: SHANT H. ZAKARIAN, ESQ.
ATTORNEY, LAW DEPARTMENT

ISSUE: Was the discharge P/O Takeya Wilson PR# [REDACTED] for just cause and if not, what shall be the remedy?

PRELIMINARY STATEMENT

Having been selected in accordance with the provisions of the Collective Bargaining Agreement between the above parties, I conducted an arbitration hearing on August 8, 2011 at the offices of the American Arbitration Association in Philadelphia, PA, at which time the parties were afforded an opportunity to present evidence and argument in support of their respective positions.

BACKGROUND

P/O Takeya Wilson, PR# [REDACTED] the grievant herein, was discharged from her position of Police Officer with the City of Philadelphia, for twelve and a half years, effective October 15, 2010, for Intoxication Section 2.01(on duty).

The Specifications in the Notice of Dismissal are in relevant part as follows:

CONTINUED NOTICE OF DISMISSAL FOR POLICE OFFICER TAKEYA WILSON #1583, PR# [REDACTED] PBI#10-0176:

In that on Saturday April 17, 2010, you were scheduled to work the 3:00 PM to 11:00 PM tour of duty in the 6th District. You reported to work intoxicated. You appeared disoriented to Sergeant D [REDACTED] # [REDACTED] as you walked through the door to go downstairs to the women's locker room. Officer O [REDACTED] S [REDACTED] # [REDACTED] who was working in the Operations Room, went down to the women's locker room to check on you. He knocked on the door and asked if you were dressed. He asked a second time if you were dressed, and you responded yes. Officer S [REDACTED] entered the locker room to see you leaning against the wall, trying to sit down, with your pants around your ankles. Officer S [REDACTED] stated "you told me you were dressed; pull up your pants." You responded that you were dressed as you pulled up your pants. There was water running on the floor. The toilet was broken with half of the toilet tank on the floor. There was blood noted on the toilet seat. You were cut on your lower back. You were covered with blood on the lower part of the back of your shirt and on the back of your pants. You were unaware that you were injured and did not remember how the injury occurred. While seated on the bench next to your locker, you needed to lean against the wall to stay upright. You appeared disoriented and your eyes were glassy. You were incoherent, mumbling unintelligibly as you attempted to answer questions. This was witnessed by Lieutenant R [REDACTED] M [REDACTED] # [REDACTED], Sergeant S [REDACTED] D [REDACTED] # [REDACTED] and Officer R [REDACTED] C [REDACTED] Sergeant [REDACTED]

D [REDACTED] needed to support you while you were walking because your gait was unsteady. You were transported to Hahnemann Hospital at approximately 4:30 PM [REDACTED]

[REDACTED] Approximately 7:30 PM you were transported to the Police Detention Unit where you were administered a Breathalyzer examination with the result indicating that you had a 0.304 B.A.C. level. Due to the high B.A.C. level you were returned to the hospital for further examination. An attempt was made to contact a family member once you were released from the hospital. No one was available. Officer B [REDACTED] D [REDACTED] you home with her for the night to ensure your wellbeing.

INTOXICATION, SECTION 2.01 (On-duty.)

In that on Saturday, February 20, 2010 you were scheduled to work the 4:00 PM to 12:00 AM tour of duty. You were assigned to a crime initiative detail at the 12th District. Approximately 4:00 AM, you were observed by Sergeant P [REDACTED] M [REDACTED] # [REDACTED] in the roll call room. You were seated with a police vest on your lap and your police pants and duty rig were on the floor. As Sergeant M [REDACTED] approached, you appeared to be sleeping with your chin resting on your chest. Sergeant M [REDACTED] engaged you in a conversation and determined that you were intoxicated, based upon your appearance and slurred speech. You were escorted into the Administrative Lieutenant's office, and your weapon was secured. Sergeant M [REDACTED], Lieutenant C [REDACTED] H [REDACTED] # [REDACTED] and Lieutenant N [REDACTED] B [REDACTED] # [REDACTED] observed your disheveled clothing, slurred speech and odor of alcohol on your breath. You also admitted that you had consumed alcohol. You were transported to the Police Detention Unit by Lieutenant B [REDACTED]. You had difficulty following instructions for the Breathalyzer operator. After the fifth attempt, you were administered a Breathalyzer examination with the result indicating you had a 0.310 B.A.C. level. On the recommendation of the A.I.D, officer who was concerned about the high B.A.C. level and the possibility of alcohol poisoning, you were transported to the nearest hospital for evaluation. This course of conduct indicates that you are in violation of the above section of the Disciplinary Code and have indicated that you have little or no regard for your responsibility as a member of the Philadelphia Police Department. Therefore, you will be dismissed after being placed on a thirty day suspension.

On 9/17/10 in the presence of Captain David Harte #76, Internal Affairs Division, Sergeant S [REDACTED] K [REDACTED] # [REDACTED], 6th District and Danielle Nitti, Attorney, you were given your Non-Criminal Gniotek Warnings and an opportunity to respond to the above allegations. You chose not to respond. You were placed on an immediate 30-day suspension, with the intent to dismiss.

DISCUSSION AND OPINION

It is generally accepted in labor relations that in disciplinary cases the Employer has the burden of proving at least by a preponderance of the credible evidence that a punishable transgression has occurred.

The ultimate disciplinary action such as a discharge must be analyzed in the context of the particular circumstance and the fact pattern associated with

the specific transgression of the grievant. In determining whether the "punishment fits the crime" a number of factors must be considered, including, the nature and the frequency of the transgression, the practice in this particular dangerous work environment and any other circumstance related to the discipline as it may impact on the generally accepted elements of just cause.

In this instance, the frequently cited seven elements of just cause, as proposed by Arbitrator Carol Daugherty in 1966, were considered but found not to be controlling for reasons discussed further below.

The City argued in relevant part that there is no question that the grievant knowingly violated the Department's alcohol policy more than once.

In essentially unrefuted testimony, at the arbitration hearing before me, Sergeant P [REDACTED] M [REDACTED] testified that on February 20, 2010 the first incident, at approximately 4:00 PM, at the beginning of her shift, the grievant was found in the roll call room by Sergeant M [REDACTED] with her chin resting on her chest, her uniform clothes and equipment on the floor, and she appeared to be sleeping. When he woke her up her slurred speech revealed that she was intoxicated. As a result of his findings he alerted his Lieutenant to determine further action.

The City pointed out that her subsequent breathalyzer test revealed that her intoxication was of a toxic level. Therefore, Sgt. M [REDACTED] transported her to the hospital. He testified at the hearing before me that she needed assistance to enter the hospital.

The grievant voluntarily sought help from the E.A.P. Captain B [REDACTED] K [REDACTED] testified in part that after the first incident in February, 2010 the grievant was placed on restricted duty while she was seeking treatment by the E.A.P. in the hope that she would correct her drinking behavior. However, unfortunately, a second similar incident occurred merely some weeks later on April, 17, 2010, when the grievant, again knowingly, reported to work intoxicated.

With respect to this second incident Police Officer O [REDACTED] S [REDACTED] testified that at the start of her shift on April 17, 2010, he found her in the locker room leaning against the wall with her pants down. Water was pouring from the bath room. The toilet tank was broken and he noticed some blood on the seat. The

grievant's back was injured but she appeared to be unaware of her injury. Sgt. D [REDACTED] her direct supervisor, who also observed her in the locker room, testified that based upon her behavior he clearly concluded that she was obviously intoxicated. He drove her to the hospital and stated that she again required assistance to enter the facility. Subsequently, her breathalyzer test still revealed a toxic BAC level of 0.304

The City convincingly argued that the grievant knowingly reported for work severely intoxicated on both occasions. A level of 0.304 is considered toxic and can even be even fatal under some circumstances. Although there was no showing that she consumed alcohol at work, the discipline of termination for reporting to work intoxicated was unanimously recommended internally by the P.B.I.

In testimony on her own behalf, the grievant conceded that she had a drinking problem. However, the FOP insisted that Policy 2.01 with which she was charged is in the gray area although it conceded that on the days in question herein the grievant reported for duty and she was clearly intoxicated as determined by the breathalyzer test. However, the FOP pointed out that the City failed to use progressive discipline when it terminated the grievant particularly since she submitted to an E.A.P. program voluntarily. The Union concluded that although "she screwed up twice", the City improperly lumped both occasions together in issuing the capital punishment of termination.

Therefore, the FOP argued that the termination of Ms. Wilson should be found to have been not for just cause and she should be reinstated to her former position with full back pay.

However, in considering the FOP argument on behalf of progressive discipline I was mindful that in a law enforcement work environment, permitting armed employees to report to work inebriated, with the knowledge that what awaits is merely progressive discipline, with the opportunity to do so perhaps three more times, before risking their jobs, would be dangerous to both the citizens as well as the members of the bargaining unit. Even in a non-police work environment there is usually a zero tolerance in reporting for work under the influence of drugs or alcohol. Breaking this rule even if unwritten is frequently regarded just cause for termination on the first offence. Of course in law enforcement employees can be required to make split-second life and death

decisions as part of their duties. Obviously, being impaired while on duty could have devastating consequences.

In this instance the grievant was granted a second chance when she was placed on restricted duty, in the hope that she may be helped by the E.A.P. Unfortunately, her drinking problem continued and she again knowingly reported for work impaired under a toxic B.A.C. level in violation of the above Disciplinary Code Section 2.01(On-duty). On both occasions the grievant was obviously consuming excessive alcohol prior to reporting to her 4:00 PM shift. Under such circumstance reinstatement would establish a dangerous precedent which cannot be tolerated in a law enforcement work environment.

Therefore, having thoroughly considered all the evidence including the arguments and allegations of both parties I have determined for the above stated reasons that the grievant, Police Officer Takeya Wilson, was discharged for just cause and I make the following Award:

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between:

FRATERNAL ORDER OF POLICE,

LODGE No. 5 (Union)

-AND-

AWARD

CITY OF PHILADELPHIA, PA

(City)

Docket No. 14 390 01837 10

(P/O Takeya Wilson #1583 PR# [REDACTED] - Discharge)

The undersigned arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above parties, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

The grievance is denied.

For the above stated reasons, the discharge of P/O Takeya Wilson #1583, PR# [REDACTED] was for just cause.



ERNEST WEISS, ARBITRATOR

STATE OF: NEW JERSEY

COUNTY OF: SOMERSET

On this 2nd day of September, 2011, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.

JILL E. FARKAS
JILL E. FARKAS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 5, 2015